

**STATE OF CALIFORNIA
DEPARTMENT OF INSURANCE**

In the Matter of the License and
Licensing Rights of
LORRAINE IGLESIAS,

Respondent

File No. SAC 10298-AP

OAH NO. N2002060255


DECISION

The attached Proposed Decision of Administrative Law Judge, M. Amanda Behe, dated October 22, 2002, is hereby adopted by the Insurance Commissioner as his Decision in the above-entitled matter and is ordered officially filed.

This Decision shall be effective thirty (30) days from the date of this Order.

IT IS SO ORDERED this 26th day of December, 2002.

HARRY W. LOW
Insurance Commissioner



By: REID A. McCLARAN
Deputy Chief Counsel

BEFORE THE
INSURANCE COMMISSIONER
OF THE STATE OF CALIFORNIA

In the Matter of the Licenses and Licensing
Rights of:

LORRAINE IGLESIAS,

Respondent.

Case No. SAC 10298-AP

OAH No. N2002060255

PROPOSED DECISION

Administrative Law Judge M. Amanda Behe, State of California, Office of Administrative Hearings, heard this matter in Stockton, California on September 11, 2002.

James McGuire, Staff Counsel, California Department of Insurance, represented the Insurance Commissioner of the State of California.

Jeffrey B. Setness, Mayall, Hurley, Knutsen, Smith & Green, Attorneys at Law, represented respondent.

Evidence was received and the record remained open for three weeks for receipt of a motion for attorney's fees on behalf of respondent. No motion was received. On September 12, 2002, the originals of reference letters for respondent received in evidence at hearing as Exhibit C were received and appended to marked Exhibit C, as noted at hearing.

The matter was submitted on October 2, 2002.

FACTUAL FINDINGS

1. Jerry L. Whitfield, Assistant Chief Counsel, Department of Insurance, filed the Accusation in his official capacity.
2. From May 13, 1998, to the present Lorraine Iglesias ("respondent") has held a license issued by the Insurance Commissioner to act as a Fire and Casualty Broker-Agent in the State of California.

3. Insurance Code section 1738 provides that the commissioner may suspend or revoke any permanent license issued pursuant to this chapter on any of the grounds set forth in Article 6 hereof [Insurance Code sections 1737 - 1748.5] on which he may deny an application. Whenever in such grounds the word 'applicant' is used, such word shall for the application of this section be the words 'the holder of a permanent license.'"
4. Insurance Code section 1668(b) provides that the Insurance Commissioner may suspend or revoke the licenses and licensing rights of respondent if it would be against the public interest to permit respondent to continue transacting insurance in the State of California.
5. Insurance Code section 1668(e) provides that the Insurance Commissioner may suspend or revoke the licenses and licensing rights of respondent if respondent is lacking in integrity.
6. Insurance Code section 1668(i) provides that the Insurance Commissioner may suspend or revoke the licenses and licensing rights of respondent if respondent previously engaged in a fraudulent act or practice.
7. Insurance Code section 1668(h) provides that the Insurance Commissioner may suspend or revoke the licenses and licensing rights of respondent if respondent has knowingly or willfully made a misstatement in an application to the commissioner for a license, or in a document filed in support of such an application.
8. Insurance Code section 1668(m)(3) provides that the Insurance Commissioner may suspend or revoke the licenses and licensing rights of respondent if respondent has been convicted of a public offense having as one of its necessary elements a fraudulent act or an act of dishonesty in acceptance, custody or payment of money or property.
9. On March 9, 1998, respondent filed an application with the Insurance Commissioner for a license to act as a Fire and Casualty Broker-Agent in the State of California. The Insurance Commissioner issued the license in reliance upon the representations made on the application.
10. Question 19 on the license application respondent completed stated the following:

"HAVE YOU EVER BEEN CONVICTED OF A CRIME?
"'Crime' includes a felony or misdemeanor and military offenses. 'Convicted' includes, but is not limited to, having been found guilty by verdict of a judge or jury, having entered a plea of guilty or nolo contendere, having had any charge dismissed or plea withdrawn pursuant to Penal Code Section 1203.4, or having been given probation, a suspended sentence or a fine. You may exclude traffic citations and juvenile offenses."

Respondent answered "No" to Question 19 on the license application.

11. Respondent admits that her answer to Question 19 of her original application and the amended application she completed on April 9, 1998, were false. In that she had been convicted of all of the following offenses:

- a. On June 7, 1989, in the Municipal Court for the Fremont-Newark-Union city Judicial District Case No. 122174-3, County of Alameda, State of California, respondent was convicted upon her plea of no contest of use and being under the influence of a controlled substance, methamphetamine, in violation of Health and Safety Code section 11550, a misdemeanor.
- b. On October 4, 1989, in the Municipal Court for the Fremont-Newark-Union City Judicial District Case No. 237047-1, County of Alameda, State of California, respondent was convicted upon her plea of guilty of two counts of forgery in violation of Penal Code section 470, misdemeanors.
- c. On October 6, 1995, in the Municipal Court for the Fremont-Newark-Union City Judicial District Case No. 164969-1, County of Alameda, State of California, respondent was convicted upon her plea of no contest of possession of a dirk/dagger in violation of Penal Code section 12020(a), a misdemeanor.
- d. On April 20, 1998, in Superior Court Case No. SC62356, County of San Joaquin, State of California, respondent was convicted upon her plea of no contest of possession of a controlled substance, methamphetamine, in violation of Health and Safety Code section 11377(a) and of petty theft in violation of Penal Code section 484, both misdemeanors.
- e. On July 22, 1998, in the Municipal Court for the Fremont-Newark-Union City Judicial District Case No. 114714-0, County of Alameda, State of California, respondent was convicted upon her plea of guilty of use and being under the influence of a controlled substance, methamphetamine, in violation of Health and Safety Code section 11550, a misdemeanor.

12. On September 21, 1998, Department Investigator Shannon Carrion wrote to respondent that the Department had information regarding her convictions. Investigator Carrion directed that respondent provide a written statement regarding her "No" answer on the applications and information about the circumstances of the incidents. Respondent spoke with Investigator Carrion by telephone about her letter. The investigator allowed respondent an extension of time to provide the written statement because respondent was nine months pregnant. Her son was born on September 28, 1998.

On December 17, 1998, respondent wrote to Investigator Carrion that she answered "No" to Question 19 because her prior convictions were over seven years old. She noted that

she had never appeared in court on the October 6, 1995, matter and did not realize she had that conviction for possession of a dirk/dagger. The charge resulted from her carrying her 2½-inch pocketknife in her purse when she went into the Fremont courthouse in relation to a civil case. Respondent described her use of speed and association with a bad crowd, and that she regretted that phase of her life. She noted that the forgery case involved writing checks with her mother's permission on an account she later learned was closed. Respondent also wrote that her job was very important to her and her family, and offered to provide character references.

Investigator Carrion did not contact respondent after she received respondent's December 17, 1998 letter.

13. On June 5, 2000, respondent filed a renewal application for the license. Question 4 on the renewal application asked:

"Have you since your last previous application to the California Department of Insurance been convicted of a crime?"

"'Crime' includes a felony, a misdemeanor or a military offense. 'Convicted' includes, but is not limited to, having been found guilty by verdict of a judge or jury, having entered a plea of guilty or noel contender, having had any charge expunged, dismissed or a plea withdrawn pursuant to Penal Code Section 1203.4, or having been given probation, a suspended sentence or a fine. You may exclude traffic citations and juvenile offenses tried in juvenile court."

Respondent answered "No" to the question on the renewal application. She believed that her answer to the question on the renewal application was accurate because the Department knew of her convictions set forth in Investigator Carrion's letter, and because of the information she provided in her own letter.

14. Nancy Dean [Pimentel] is the President-Owner of Richter Robb Insurance Services, a surplus line broker, and holds a surplus lines license and special surplus lines license. She has held a fire and casualty license issued by the Department since 1981, and has worked in the industry since 1961. She described that her firm acts as an agent for several carriers, and other brokers use her firm for hard-to-place insurance.

Ms. Dean hired respondent in October 1997 as an insurance rater. Her job tasks were to "rate up" files and write a quote letter. Respondent was outstanding in that job, which she held for two years, and in 1999 she was promoted respondent to the position of senior underwriter. Customarily employees work at the interim step of underwriter, but respondent's superior knowledge of bonding, liability and other insurance issues merited the higher promotion.

In the job she has held since 1999 respondent has responsibility for underwriting applications, determining the rating structure a file should have, gathering information, deciding quotes, issuing policies, and communications with brokers. Ms. Dean testified that

respondent has been an excellent employee, and is on time, has integrity, and works well with brokers and her colleagues. Companies with whom Richter Robb works trust respondent because she does not make mistakes and follows relevant guidelines. She has trained other staff to be underwriters.

Ms. Dean sees respondent about every fifteen minutes at work. She persuasively testified that respondent has never been under the influence of drugs or alcohol, and Ms. Dean will not tolerate such substances in her drug-free office. She has fired employees for substance abuse. Ms. Dean has observed that respondent is a loving and good mother who balances her responsibilities to her employer and her family. Respondent works nights and weekends as needed for her job, and is very dedicated.

15. Evelyn Greager, respondent's colleague at Richter Robb Insurance Services for four years, is an underwriter after having worked as a rater. Ms. Greager goes to respondent for help and advice on a daily basis, and considers her an outstanding and smart underwriter. She noted that respondent puts in long hours at her job, and still is a wonderful and caring mother.

16. Helen Nordhausen, respondent's mother, has worked in the insurance industry for 27 years and is a senior underwriter. Ms. Nordhausen recently passed the test for her broker's license. She described that during her period of drug use respondent was out of control. Out of concern for her grandson Ms. Nordhausen threatened to taken respondent's older son, and a few weeks later respondent asked her to care for that child while she "got clean." Respondent stopped her drug use, and has remained drug-free. She married about 4½ years ago, and has a second son. Ms. Nordhausen testified to respondent's devotion to her family.

Ms. Nordhausen persuasively testified that respondent has successfully turned her life around in the last five years. She is financially responsible, pays her bills, and enjoys her job.

17. Respondent's friends David Buscher and Susan Cabaniss wrote that, like respondent, they have a past of convictions and drug use about which they are ashamed. They described that after breaking away from a bad relationship respondent turned her life around, and now is a devoted wife and mother. They wrote that respondent's employment played a major part in her success in changing her life, and that a license is essential to that employment which has made her a productive member of society.

Bennie Hatton has known respondent for twelve years. He wrote that respondent has changed her life around, and is a dedicated employee and good mother and wife.

18. Respondent admits her convictions, which were misdemeanors and occurred during her period of addiction to drugs. She has not had a conviction in the past four years, and is committed to her rehabilitation. With regard to her conviction for possession of a dirk/dagger respondent described that she has a small pocket knife she uses for fishing, to cut

the heads off anchovies or hooks out of fish. It was in her purse and it set off the metal detector at the courthouse. Her petty theft conviction involved her then-boyfriend placing a bottle of tequila in her purse when they were in a store.

Respondent realizes the crimes are serious, and she should have been candid with the Department on her application. She lied to get a license just to keep her job, and now loves and values that position.

19. The Department has permitted respondent to continue to hold an insurance license for almost four years while aware of her convictions. During that time respondent has rehabilitated herself as demonstrated by her maintaining full-time employment and fulfilling her familial obligations to her husband and two sons, who are 17 and 3 years old.

Honesty, integrity, trustworthiness and a respect for the property of others are very important traits in insurance agents. While respondent has a history of serious convictions due primarily to her involvement with an addictive controlled substance, she has demonstrated rehabilitation and taken responsibility for her wrongdoing.

The evidence established that during the time she has been licensed respondent has functioned as an honest, hard-working, and reliable licensee. The public interest would be protected if she were permitted to continue in a licensed capacity under the terms set forth in the proposed Order.

LEGAL CONCLUSIONS

1. Clear and convincing evidence to a reasonable certainty established cause for revocation of respondent's licenses and licensing rights pursuant to Insurance Code sections 1738 and 1668(b) in that it would be against the public interest to permit respondent to continue transacting insurance in the State of California.

2. Clear and convincing evidence to a reasonable certainty established cause for revocation of respondent's licenses and licensing rights pursuant to Insurance Code sections 1738 and 1668(e) in that respondent's conduct demonstrates that respondent is lacking in integrity.

3. Clear and convincing evidence to a reasonable certainty established cause for revocation of respondent's licenses and licensing rights pursuant to Insurance Code sections 1738 and 1668(h) in that respondent has knowingly and willfully made a misstatement of fact in an application to the Insurance Commissioner by failing to disclose a criminal conviction.

4. Clear and convincing evidence to a reasonable certainty established cause for revocation of respondent's licenses and licensing rights pursuant to Insurance Code sections 1738 and 1668(i) in that respondent has previously engaged in a fraudulent practice or act.

5. Clear and convincing evidence to a reasonable certainty established cause for revocation of respondent's licenses and licensing rights pursuant to Insurance Code sections 1738 and 1668(m)(3) in that respondent was convicted of a public offense having as one of its necessary elements a fraudulent or dishonest act in acceptance, custody and payment of money or property.

6. Respondent has demonstrated rehabilitation and her fitness for licensure by the Department. The interests of the Department in supervising the activities of its licensees and the public interest would be protected if she continued in a licensed capacity under the terms set forth in the proposed Order.

ORDER

The licenses and licensing rights of respondent Lorraine Iglesias are revoked. However, that revocation is stayed and a restricted license shall be issued to respondent subject to the following limitations, conditions, and restrictions:

1. Respondent shall comply with all laws and regulations governing the licensed activities.

2. Respondent shall submit to the Insurance Commissioner a statement signed by any employing insurance broker or agent which shall certify that the employer has read the Decision of the Commissioner which granted the right to a restricted license and that the employer will exercise close supervision over the activities for which an insurance license is required.

3. Respondent shall report in writing to the Department of Insurance, as directed by the Insurance Commissioner by separate written order issued during the term of the restricted license, such information concerning respondent's activities for which an insurance license is required as the Commissioner shall deem appropriate to protect the public interest.

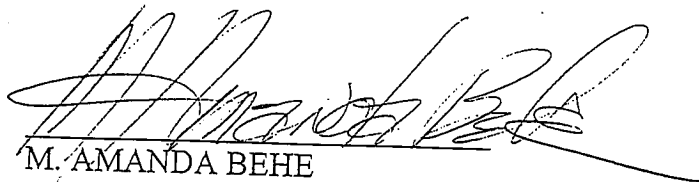
4. The restricted license may be suspended prior to hearing by order of the Insurance Commissioner in the event of respondent's conviction, including by a plea of no contest, of a crime which bears a significant relationship to respondent's qualifications, duties or functions as an insurance licensee.

The restricted license may also be suspended prior to hearing by order of the Insurance Commissioner that respondent has violated provisions of the Insurance Code, regulations of the Insurance Commissioner, or conditions attaching to the restricted license.

5. Respondent shall not be eligible to apply for the issuance of an unrestricted license nor the removal of any of the conditions, limitations, or restrictions of the restricted license until three years have elapsed from the effective date of the issuance of the restricted license to respondent.

Dated:

October 23, 2002



M. AMANDA BEHE

Administrative Law Judge

Office of Administrative Hearings